IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 15025 OF 2007

Dated : July 17, 2007

Between:

The Superintending Engineer,
Pulichinthala Project Circle,
Jaggaiahpet, Krishna District and others

Petitioners

AND

Institution of Upa-Lokayukta of Andhra Pradesh,
Rep. By Upa-Lokayukta, Basheerbagh,
Hyderabad, and another

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 15025 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

This writ petition is filed seeking a writ of certiorari calling for the records relating to the complaint No. 768/2006-B2 dated 9.4.2007 and to quash the same as perverse, illegal and without jurisdiction.

The 2nd respondent herein filed complaint No. 768 of 2006-B2 before the 1st respondent stating that he worked as Assistant Engineer in the office of the Pulichintala Project Division I, Jaggaiahpeta upto 30.9.2003 and since he was not keeping good health, opted for voluntary retirement under medical invalidation, which according to the 2nd respondent, was accepted by the petitioners. It is his case that even though he made several representations, his post retirement benefits were not settled and whereas, his health is deteriorating day by day. As such, he made complaint to the 1st respondent.

Whereas, it is the case of the petitioners that the 2nd respondent submitted the medical certificate dated 10.1.2007 though he actually proceeded on medical leave from 1.10.2003. It is also their case that before

considering the request of the 2nd respondent for voluntary retirement on medical grounds, opinion of the Medical Board has to be obtained and in terms of GO Ms. No. 260 dated 4.9.2003, GO Ms. No. 8 Fin. (FR.I) Department dated 8.1.2004 and GO Ms. No. 11 Fin. (FR.I) Department dated 13.1.2004, the entire period of unauthorised absence has to be treated as dies-non.

The 1st respondent, in view of these circumstances, directed the petitioners not only to consider the request of the complainant for voluntary retirement on medical grounds, but also to treat the period of his absence for which he was advised complete rest, whether it constitutes a real unauthorized absence, leave on medical grounds and for further report from the petitioners, posted the matter to 3.7.2007.

It is this order of the 1st respondent, which is being assailed in this writ petition contending that

In passing this order, the 1st respondent has observed that the doctor certified that the 2nd respondent herein was suffering from Carcinoma + LB Ache at various intervals from 1.10.2004 to 15.7.2004

and he was advised absolute rest and, therefore, even though it may constitute a lapse on the part of the 2nd respondent, for non-production of the medical certificate in time, the absence cannot be treated as unauthroised absence.

It is contended on behalf of the petitioners that the Upa Lok Ayukata does not get jurisdiction to entertain the matter, inasmuch as it relates to granting of leave and it is the Administrative Tribunal, in which the jurisdiction is vested. It is also the contention on behalf of the petitioners that no orders were passed on the application submitted by the 2nd respondent seeking voluntary retirement.

Whereas, it is the contention on behalf of the 2nd respondent that this writ petition is filed against an interlocutory order passed by the 1st respondent. The petitioners ought to have submitted report in compliance of the orders of the 1st respondent, but without complying the directions of the 1st respondent, the petitioners have straightaway invoked the extraordinary jurisdiction of this Court.

It is true that the 1st respondent posted the matter

to 3.7.2007 for further report from the petitioners. The petitioners without submitting any such report, have approached this court and filed the instant writ petition. Therefore, having heard the learned Assistant Solicitor General and having perused the record, without adverting to the merits of the case or jurisdictional aspect, we direct the petitioners to submit report before the 1st respondent with regard to the further action taken by them and also raise all such pleas that are open to them under law, including jurisdictional aspect.

With the above directions, the writ petition is disposed of. No order as to costs.

_____

T.MEENA KUMARI, J.

_____

G.CHANDRAIAH, J.

July 17, 2007
MAS